IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.83/1999

1. Smt. Nayantara Agrawal
C/o. Agrawal Minerals
Margao, Goa.

2. M/s. Agrawal Minerals (Goa)
Pvt. Ltd., a Private Limited Company,
having its registered Office at
Margao-Goa, through its constituted
Attorney Shri Devidas S. Kudchadkar,
Resident of Curchorem, Goa. .... Petitioners.

V/s

1. Shri Inacio Martins (deceased)
through his legal heirs :
a. Shri Guru Shirodkar
alias Guru Martins,
major, married, advocate.

b. Smt. Leela Shirodkar,
alias Vaidya Shirodkar,
wife of Guru Shirodkar,

c. Shri Ganesh Martins
alias Ganesh Shirodkar,

d. Smt. Soku Martins,
wife of Ganesh Martins,

e. Smt. Meenuka Martins
alias Meenuka Shirodkar,
wife of Yeshwant Silva,

f. Shri Yeshwant Silva.

g. Smt. Piru Martins alias
Piru Shirodkar,
wife of Raymond Viegas,

h. Shri Raymond Viegas,

i. Smt. Vatsal Martins
alias Vatsal Shirodkar,
wife of Laxman Silva,

j. Shri Laxman Silva,
(b to j are represented by
their Attorney Shri Guru
Shirodkar) All resident of

Caranzalem, Alvao,
Dona - Paula, Goa.

2. Shri Narayan Hari Naik,
r/o. H.No. 252, Cardozo Waddo,
Taleigao, Tiswadi, Goa. ..... Respondents.

Mr. Y.V. Nadkarni, with Mr. Rassano Noronha, Advocate for the petitioners.

Mr. V. Shirodkar, Advocate for respondent 1(a) to (j) absent.

Mr. S.D. Lotlikar, Sr. Advocate with Ms. Shambhavi Dessai, Advocate for respondent No.1.

CORAM : N.N. MHATRE, J.

DATE : MARCH 05, 2004.

ORAL JUDGMENT :

By this petitioner, the order of the Dy. Collector quashing and setting aside the order of the Mamlatdar dated 17.9.1998 has been impugned. The parties to the petition have a chequered history of litigation, which has commenced sometime in 1968. The original respondent No.1 herein i.e. Inacio Martins filed a suit for injunction and declaration on 26.10.1968 to restrain the petitioner No.1 and respondent No.2 from dispossessing him from the property "Palmar o Oiteral do Predio Aivao". This suit was dismissed by the Civil Judge on 28.3.1974, as Inacio Martins was not in possession. Another suit was filed by original

respondent No.1 for restoration of possession on the ground that he was a lawful tenant and had been dispossessed without taking recourse to law. This suit was preferred on 6.5.1974. According to Inacio Martins, petitioner No.1 and respondent No.2 herein were trespassers and, therefore, liable to be evicted. In this suit, Inacio Martins claimed that he was a tenant of petitioner No.1 with effect from 1.1.1965 by virtue of a written lease, which had been renewed subsequently. The suit was decreed and the appeal preferred against that was dismissed. In the second appeal preferred in this Court, the decree of the trial Court was set aside and the suit dismissed. Aggrieved by this, Inacio Martins moved the Apex Court and vide Judgment reported in AIR 1993 SC 1756, the Apex Court remitted the matter to the trial Court with a direction to follow the course that may be found appropriate in the fact-situation arising out of the pleadings. The trial Judge then by the order dated 27.1.1997, referred the tenancy issue to the Mamlatdar of Tiswadi Taluka. The issue before the Mamlatdar was "whether the defendants prove that they are the tenants of the suit property under Chalta No.1 of P.T. Sheet No.185 situated at Aivao, Caranzalem, Dona Paula, Goa." The trial Court directed the parties to maintain status quo on an application filed for temporary injunction by the legal heirs of Inacio Martins, who are

respondents No.1(a) to (j) in the present petition. While deciding appeal from order preferred against that order, this Court observed as follows :

> "7. In the present case before me, the issue which would be required to be disposed of on the pleadings of the parties, is relating to tenancy claim by the original respondent No.1 as well as the appellant and these issues admittedly can be decided only by the Mamlatdar under the said Act.
>
> If the Mamlatdar decides these issues, then nothing would be left to be decided by the Civil Court insofar as the claim put forward by the parties regarding tenancy is concerned. The Mamlatdar is also empowered to restore possession u/S.16 of the said Act. Therefore, insofar as this aspect is concerned, I am of the opinion that with the coming into force of the Fifth Amendment, the entire remedy in the fact-situation was before the Mamlatdar under the said Act."

This Court then directed that the plaint be returned to the heirs of the original respondent No.1 to present it to the Mamlatdar of Tiswadi. The Mamlatdar was directed to dispose of the matter, expeditiously within six months from the date of presentation of the plaint. Accordingly, the plaint was presented to the Mamlatdar. Thereafter, on the basis of the pleadings of the parties issues were framed by the Mamlatdar. The issues framed are as follows :

> (i) Whether applicant proves that Late Inacio Martins was tenant in possession upto May,

1968 ?

(ii) Whether applicant proves that they are entitled to restoration of possession of the suit property ?

(iii) Whether applicant proves that lease of the Suit property was not legally terminated ?

(iv) Whether the Opponent No.1 proves that he is the tenant of the Suit property from 1/1/1965 ?

(v) Whether the Opponent No.2 proves that Opponent No.1 cannot claim tenancy in respect of Suit property in view of surrender of his leasehold right on 22/3/1975, and was only a caretaker of Suit property thereafter upto 1984 ?

2. Respondent No.2 herein moved an application before the Mamlatdar praying for alteration/modification of issue No.(iv) on the ground that there was no need for respondent No.2 to prove that he was a tenant of the suit property. This application was rejected on 17.9.1998 by the Mamlatdar. Aggrieved by this order, a revision was preferred to the Dy. Collector by respondent No.2. The Dy. Collector, on consideration of rival contentions, allowed the revision application and set aside the impugned order dated 17.9.1998. The Dy. Collector held that issue No. (iv) need not have been framed and the parties were not required to prove that issue. It is against this order that the present petition has been preferred.

3. Mr. Nadkarni for the petitioners submits that this Court has observed in paragraph 7 of the Judgment in Appeal from Order No.22/1997 between the same parties, that the issues relating to tenancy claimed by Inacio Martins as well as the appellant in that case (respondent No.2 herein), are the issues admittedly which can be decided only by the Mamlatdar. On the basis of this observation, Mr. Nadkarni submits that the Mamlatdar had correctly framed issue No.(iv) and the Dy. Collector was wholly in error to delete that issue. He submits that the litigation would only be protracted if this issue is deleted and respondent No.2 is not directed to prove that he is a tenant of the suit property. It is submitted by Mr. Nadkarni that both, respondents No.1 and 2 claim to be the tenants of the same property and, therefore, it would be appropriate that the Mamlatdar decides the issue once and for all, as to who, if at all, is the tenant of the suit property. He further submits that a reference is made in a Land Acquisition Case No.45/1997 in respect of the same property where petitioner No.2 and respondent No.1(a) to (j) are the parties. Issues have been framed in that Land Acquisition Reference, which are as follows :

1. Whether the applicant proves that they alone are entitled to the entire compensation awarded by the Land Acquisition Officer ?

2. Whether respondent No.1 proves that the applicant has no rights to claim any compensation since he is a tenant and deemed purchaser of the acquired land ?

3. Whether the respondent No.2 proves that he is the tenant in possession and enjoyment of the acquired land claiming to be the original tenant Inacio Martins ?

4. Whether the respondent No.2 proves that neither applicant nor respondent No.1 has no rights to the compensation and that he alone is entitled to the said compensation?

The learned Advocate, therefore, submits that since the issues regarding tenancy are pending before the Mamlatdar in both the reference and in the suit instituted before the Mamlatdar by respondent No.1, both these cases should be heard simultaneously, so that there are no contradictory findings.

4. Mr. Lotlikar appearing for respondent No.2 submits that respondent No.2 has no grievance against the petitioner, in the application pending before the Mamlatdar. Therefore, he submits that there is no need for respondent No.2 to prove that he is a tenant, before the Mamlatdar. He submits that in fact, petitioner No.1 has admitted that respondent No.2 is his tenant. Moreover, he submits that in view of the issues framed in the Reference under the Land Acquisition Act, if at all he is able to prove that he is a tenant, those findings would operate as res judicata.

5. The observations made by this Court while disposing of the Appeal From Order NO.22/1997 do not, in any manner, indicate that the Mamlatdar was directed to decide the tenancy issue in respect of both the respondents. This Court has merely observed that the claim to tenancy made by Inacio Martins and respondent No.2 herein could be decided only by the Mamlatdar under the Tenancy Act. Accordingly, the plaint was directed to be returned to be presented before a proper forum. The Dy. Collector has committed no error at all by deleting the issue No.(iv), whereby respondent No.2 was required to prove that he is a tenant of the suit property from 1.1.1965. The dispute before the Mamlatdar was between respondent No.1 on the one hand and petitioner No.1 and respondent No.2 on the other. There is no interse dispute between petitioner No.1 and respondent No.2 pending before the Mamlatdar. Therefore, in my view, the Dy. Collector has rightly deleted the issues requiring respondent No.2 to prove his tenancy. Moreover, the issues framed in the Land Acquisition Reference regarding the claim for compensation include the claim based on tenancy. The aspect of tenancy has already been referred to the Mamlatdar for adjudication. The order of the Dy. Collector is, therefore, upheld. Rule discharged. No order as to costs.

As the entire litigation between the petitioners and respondents No.1 and 2 is pending for almost 40 years, it would be advisable for the Mamlatdar to dispose of case No.TNC/120/97 and the issue relating to tenancy raised in the Reference under the Land Acquisition Act which has been referred to the Mamlatdar as expeditiously as possible.

NISHITA MHATRE, J.

ssm.